



APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1057

JOHN W. KEY, *et al.*,
Appellants,

v.

MICHAEL M. DOYLE, *et al.*,
Appellees.

APPEAL FROM THE DISTRICT OF COLUMBIA
COURT OF APPEALS

APPEAL DOCKETED JANUARY 31, 1977
JURISDICTION POSTPONED MARCH 21, 1977

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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 9490

**ESTATE OF SALLYE LIPSCOMB FRENCH
JOHN W. KEY, et al.,**

Appellants,

v.

MICHAEL M. DOYLE, et al.,

Appellees.

LIST OF DOCKET ENTRIES

(The docket entries are not part of the record.)

Apr. 28, 1975 Transcript of record (n)
June 9, 1975 Appellants' brief (m-6 & 9)
June 23, 1975 Motion of appellee, St. Matthews
Cathedral, to extend time to file brief to July
25th (m-23)
June 25, 1975 Clerk's order granting appellee, St.
Matthews Cathedral, ext. to file brief to July
25.
July 7, 1975 Motion of appellee, Calvary Baptist
Church, for leave to file brief to July 25. (m-3)
July 8, 1975 Clerk's order granting Calvary Baptist
Church for leave to file brief to July 25.
July 23, 1975 Notice of Appellee, St. Matthew's
Cathedral, under Rule 47 (m-23)

July 25, 1975 Notice of appellee, Calvary Baptist Church, under Rule 47 (m-24)

July 25, 1975 Appellee's (St. Matthew's Cathedral) brief (m-24)

July 25, 1975 Appellee's (Calvary Baptist Church) brief (m-25)

Nov. 5, 1975 ARGUED before Judges Reilly, Yeagley and Mack.

Nov. 1, 1976 Opinion per Associate Judge Julia Cooper Mack. (Judges Yeagley, Mack and Reilly)

Nov. 1, 1976 Judgment affirming judgment of trial court.

Nov. 23, 1976 MANDATE ISSUE

Jan. 26, 1977 Appellants' notice of appeal to the Supreme Court (m-25)

Jan. 31, 1977 Letter from Clerk to Clerk, Supreme Court.

Mar. 30, 1977 Certified copy of order from Supreme Court dated March 21, 1977 postponing further consideration of the question of jurisdiction to the hearing of the case on the merits. (Supreme Court No. 76-1057).

**SUPERIOR COURT OF THE DISTRICT
OF COLUMBIA
(Probate Division)**

Estate of Sallye Lipscomb French,
Deceased
Administration No. 2188-72

Relevant docket entries:

June 27, 1974 Complaint of Michael M. Doyle for instructions.

Sept. 26, 1974 Motion of the District of Columbia for leave to intervene as a defendant and for other relief, filed with points and authorities in support of motion and certificate of service.

Sept. 27, 1974 Order granting Motion, and that the answer with amended caption be hereby accepted.

Dec. 6, 1974 Stipulation regarding statement of material facts as to which there is no genuine issue.

Dec. 6, 1974 Motion of defendant #15 for Summary Judgment, filed with memorandum of points and authorities, exhibit and certificate of mailing.

Dec. 11, 1974 Motion of the District of Columbia by its attorneys for Summary Judgment, filed with points and authorities in support of Motion and certificate of mailing.

Dec. 12, 1974 Motion of Defendant #14, Calvary Baptist Church, for Summary Judgment, filed with memorandum of points and authorities in

support of defendant's motion and certificate of mailing.

Dec. 12, 1974 Motion of defendant John W. Key and the heirs at law of Sallye Lipscomb French for Summary Judgment, filed with statement of material facts as to which there is no genuine issue, request for hearing; memorandum of points and authorities in support of Motion of John W. Key; exhibit and certificate of mailing.

Feb. 13, 1975 Opinion and Order, filed with certificate of mailing.

March 4, 1975 Notice of appeal of John W. Key, et al. the defendants heirs by their attorney from Court Order of February 13, 1975, filed with certificate of mailing.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

[Title omitted in printing.]

COMPLAINT FOR INSTRUCTIONS.

The Complaint of Michael M. Doyle respectfully represents to the Court:

1. Your Complainant is the duly appointed and qualified Executor of the above captioned estate and is now desirous of filing his Final Account herein.

2. The Last Will and Testament of Sallye Lipscomb French, deceased, provided certain legacies and bequests to specified individuals, bequeathed all furniture and furnishings to the Little Sisters of the Poor (St. Joseph's Home), and disposed of the residue of said estate as follows:

"11. All the rest, residue and remainder of my property, real, personal and mixed, I desire divided into three (3) equal portions, and I give, devise and bequeath, absolutely and forever, and in fee simple, one (1) portion to Calvary Baptist Church, Washington, D.C., and one (1) portion to St. Matthews Cathedral, Washington, D.C., and one (1) portion to the Johns-Hopkins University, Baltimore, Maryland. Said bequest to Johns-Hopkins University is to be used as a scholarship fund at the School of Medicine. This fund is to be known as Bernard S. French Scholarship Fund and to be administered by the Dean of the School."

3. Said Will was executed on October 13, 1972, and Codicil thereto (which Codicil is not germane to the question now presented) was executed on October 26, 1972. The Testatrix died on November 2, 1972, within thirty (30) days of the execution of said Will and Codicil.

4. Title 18, Section 302 of the District of Columbia Code provides that "a . . . bequest . . . to a religious sect, order of denomination . . . is not valid unless it is made at least thirty days before the death of the testator."

5. On February 7, 1972, Judge Gesell of the United States District Court for the District of Columbia, which Court then exercised exclusive jurisdiction over District of Columbia probate proceedings, held the above statute unconstitutional, void and of no effect, stating:

"The Court is unable to find in the statute any justification which can withstand examination of the statute in the light of the First Amendment.

* * *

The First Amendment is now clearly defined in many cases, including cases brought to the Court's attention in the papers. The question of determining what acts of Government tend to interfere with religion falls well within what the courts have long been called on to do in this sensitive area and I think it is time this statute be identified for what it is and stricken."

No appeal was taken from said District Court decision, a copy of which is attached hereto and made a part hereof.

6. Believing that said decision of the District Court now represents and states accepted law of the District of Columbia, your Complainant proposed to state a Final Account as Executor herein, showing distribution of furniture and furnishings to the Little Sisters of the Poor and distribution of one third of the residue of said estate to Calvary Baptist Church and one third of said residue to St. Matthews Cathedral, all three proposed

distributees being non-taxable. However, a representative of the District of Columbia Department of Finance and Revenue has questioned the legality of such distribution in view of Section 18-302 of the District of Columbia Code, and has indicated the intention of that Department to refrain from issuing the Tax Certificate required by Rule 14(c) of this Court, in the event that the proposed distribution is shown in the Final Account of Complainant.

7. The furniture and furnishings bequeathed to the Little Sisters of the Poor have been appraised herein at a value of \$3,347.00. The residuary estate is presently valued at approximately \$328,000.00, subject to payment of administration expenses, including the Executor's commission. The bequest of one-third of the residuary estate to Johns-Hopkins University has not been questioned by the Department of Finance and Revenue.

8. In the event that this Honorable Court should determine that the bequests to the Little Sisters of the Poor, to the Calvary Baptist Church and to St. Matthew's Cathedral are void by reason of the provisions of 18-302 of the District of Columbia Code, then the respective amounts of said bequests will be intestate property passing to the following heirs at law and next of kin of the Testatrix, all of whom are adults under no legal disability:

John W. Key - brother

Route 2

Hereford, Texas 79045

Children of Brother - Ira T. Key, deceased

Aubrey T. Key - nephew

4100 Jackson Street, #238

Austin, Texas 78731

Florence Key Mayes – niece
1438 Edwin
Beaumont, Texas 77705

Children of sister – Eugenia Key Cagle, deceased

Myna Cagle Milner – niece
1812 South Tyler Street
Little Rock, Arkansas 72204

Sadah Cagle Quesenberry – niece
2006 Fair Park Boulevard
Little Rock, Arkansas 72204

Katherine J. Cagle – niece
1220 South Taylor Street
Little Rock, Arkansas 72204

Children of brother – Willette Key, deceased

Dorothy Katherine Key – niece
4115 Wisconsin Avenue, N.W.
Washington, D.C. 20016

Ruth May Key Garrett – niece
1320 Stever Avenue
Peoria, Illinois 61604

Shelton Thomas Key – nephew
708 Maryland Avenue
Amarillo, Texas 79106

Martha Louise Key Norris – niece
8 West Rosemont Avenue
Alexandria, Virginia 22301

Anna Pearl Key Keene – niece
Route 3, Box 2
Walnut Grove, Missouri 65770

Son of deceased sister – Evelyn Key Anderson

Frank O. Anderson – nephew
4105 Byrd Court
Kensington, Maryland 20795

9. Your Complainant desires the instructions of this Honorable Court as to whether effect should be given to the intent of the Testatrix with respect to distribution of the bequests provided for the Little Sisters of the Poor, St. Matthew's Cathedral and Calvary Baptist Church.

WHEREFORE, the premises considered, Complainant prays:

1. That the above named heirs at law and next of kin of the Testatrix, together with Little Sisters of the Poor, St. Matthew's Cathedral, Calvary Baptist Church and the proper officials of the government of the District of Columbia, be made parties respondent to this Complaint; and that summons and process issue to them pursuant to Title 13, Chapter 3, of the District of Columbia Code, requiring them to appear herein by a day certain and answer this Complaint unless they voluntarily appear and answer.

2. That this Honorable Court will instruct Complainant as to the proper distribution of the property comprising the bequests to the Little Sisters of the Poor, to St. Matthew's Cathedral, and to the Calvary Baptist Church.

3. For such other and further relief as to the Court may seem proper.

/s/ Michael M. Dyle
MICHAEL M. DOYLE
Executor

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the foregoing Complaint, subscribed by me as Executor of the Estate of Sallye Lipscomb French, Deceased, and know the contents thereof; that the facts stated therein on personal knowledge are true and those stated on information and belief I believe to be true.

/s/ Michael M. Doyle
MICHAEL M. DOYLE

Subscribed and sworn to before me this 26th day of June, 1974.

/s/
Notary Public, D.C.

/s/ Michael H. Doyle
Michael M. Doyle, Executor
Estate of Sallye Lipscomb French, deceased
1010 Vermont Avenue, N.W.
Washington, D.C. 20005
NA 8-1930

**SUPERIOR COURT
OF
THE DISTRICT OF COLUMBIA
Probate Division
[Title omitted in printing.]**

**STIPULATION REGARDING STATEMENT
OF MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE**

It is hereby agreed and stipulated by and between counsel for the respective parties hereto that there is no genuine issue as to any of the following material facts.

1. The testatrix Sallye Lipscomb French executed the subject Last Will and Testament on October 13, 1972, and a Codicil, which is not involved in this litigation, on October 26, 1972. She died on November 2, 1972.

2. By the terms of her Last Will and Testament one-third of her residue is left to the Calvary Baptist Church, Washington, D.C., and one-third to St. Matthew's Cathedral, Washington, D.C.

3. The Calvary Baptist Church is a District of Columbia religious corporation which has legal capacity to accept bequests.

4. St. Matthew's Cathedral, Washington, D.C., is owned by William W. Baum, Roman Catholic Archbishop of Washington, a corporation sole, by special act of Congress approved May 29, 1948, as Private Law 319 - 80th Congress. Title to property bequeathed to St. Matthew's Cathedral under canon law belongs to the corporation sole which has legal capacity to accept bequests.

5. By the terms of her Last Will and Testament, testatrix devised and bequeathed all of her furniture and furnishings to the Little Sisters of the Poor (St. Joseph's Home) Washington, D.C.

6. The Little Sisters of the Poor is a non-profit charitable corporation which was organized under the laws of the District of Columbia and which operates a home for the aged located at 220 H Street, N.W., Washington, D.C. As specified in the articles of incorporation, the Little Sisters of the Poor was incorporated "for benevolent and charitable purposes" and its particular business and object is "to take care of, support and maintain aged men and women."

7. The decedent executed two prior Last Wills and Testaments, one on May 29, 1963, and one May 4, 1960.

(a) Under the terms of the May 29, 1963, instrument the following bequests among others were made:

1. Baptist Home for Children, Bethesda, Maryland, \$500.00.

2. Immaculate Conception Indian Mission School, Stephen Hyde County, South Dakota, \$200.00.

3. Catholic Foreign Mission, Society of America, Maryknoll, P.O., New York, \$1,000.00.

4. The Society of Catholic Medical Missionaries, Inc., Philadelphia 11, Pennsylvania, \$1,000.00.

5. Father Flanagan's Boystown Home, Boystown, Nebraska, \$1,000.00.

6. Holy Cross Foreign Mission Society, Washington, D.C., \$1,000.00.

7. "It is my wish that whatever furniture or household effects she may not desire, I suggest she send them to the Holy Cross Foreign Mission Society, Washington, D.C."

8. One-fifth from sale of residence to Calvary Baptist Church, Washington, D.C.

9. One-fifth from sale of residence to Southern Theological Seminary, Louisville, Kentucky.

10. One-fifth from sale of residence to St. Benedict's Abbey, Benet Lake, Wisconsin.

11. One-fifth from sale of residence to St. Matthew's Cathedral, Washington, D.C.

12. One-fifth from sale of residence to New Subiaco Abbey, Subiaco, Arkansas.

(b) Under the terms of the May 4, 1960, instrument the following bequests among others were made.

1. To St. Benedict's Abbey, Subiaco, Logan County, Arkansas, \$500.00.

2. To the National Shrine of the Immaculate Conception, Washington, D.C., 160 shares of common stock of E.I. Dupont, Newwurst Company to pay for a memorial window.

3. To St. Matthew's Catholic Church, Washington, D.C., 50 shares of Schering Corporation stock.

4. To Calvary Baptist Church of Washington, D.C., 50 shares of Schering Corporation stock.

5. To the Society of Catholic Medical Missionaries, Inc., Philadelphia, Pennsylvania, 50 shares of Schering corporation stock.

6. One-fourth residue of stock and securities to the Catholic Foreign Mission Society of America, Inc., Maryknoll P.O., New York.

7. One-fourth residue of stock and securities to St. Benedict's Abbey, Benet Lake, Wisconsin.

8. One-fourth residue of stock and securities to St. Labres Indian School, Ashland, Rosebud County, Montana.

9. One-fourth residue of stock and securities to Immaculate Conception Indian Mission School, Stephen Hyde, County, South Dakota.

10. One-third from sale of residence to Calvary Baptist Church, Washington, D.C.

11. One-third from sale of residence to St. Benedict's Abbey, Benet Lake, Wisconsin.

12. One-half residuary to the Society of Catholic Medical Missionaries, Inc., Philadelphia, Pennsylvania.

8. The Testatrix' husband, Dr. Bernard French, died before May 4, 1960, and was a member of the Catholic Church.

9. The Testatrix was a member of the Baptist Church.

10. None of the parties to this litigation know of any attempts by any members or representatives of either the Baptist Church or the Catholic Church to influence, cajole or otherwise persuade the Testatrix to make any bequests to them or their organizations.

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The Opinion of the Superior Court of the District of Columbia is reprinted in full in Appellants' Jurisdictional Statement at page 1b.

The Opinion of the District of Columbia Court of Appeals is reprinted in full in Appellants' Jurisdictional Statement at page 1a.